

Final

**Rhode Island Supreme Court  
Ethics Advisory Panel Op. 2016-03  
Issued April 28, 2016**

FACTS

The inquiring attorney is a part-time municipal court judge in City, and also is the principal lawyer in a law firm. The inquiring attorney's son will be filing a lawsuit in Superior Court against City relating to his termination of city employment. Attorneys in the inquiring attorney's law firm represented his/her son in related arbitration proceedings. The same lawyers will represent the son in the Superior Court action. The inquiring attorney has not acquired confidential information about City during his tenure as a municipal court judge. The inquiring attorney states that he/she will be screened from his/her son's case if lawyers in his/her law firm represent his son.

ISSUE PRESENTED

The inquiring attorney, who is a part-time municipal judge for City, asks whether lawyers in his/her law firm may represent his/her son in a lawsuit against City.

OPINION

It is not a conflict of interest under Rules 1.11 or 1.7 for the law firm of the inquiring attorney, who is also a part-time municipal court judge in City, to represent the inquiring attorney's son in a Superior Court lawsuit against City.

REASONING

The inquiring attorney is a part-time municipal court judge and also has a private law practice. Two Rules of Professional Conduct must be considered to determine whether a conflict of interest exists under these facts, Rule 1.11 entitled "Special conflicts of interest for former and current government officers and employees" and Rule 1.7 entitled "Conflict of interest: Current clients." Rule 1.11 states in pertinent part as follows.

**Rule 1.11. Special conflicts of interest for former and current government officers and employees.** (a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to Rule 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

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(e) As used in this Rule, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties, and

- (3) any other matter covered by the conflict of interest rules of the appropriate government agency.

In applicable part, Rule 1.7 states:

**Rule 1.7. Conflict of interest: Current clients.** (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or

- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

While the language of Rule 1.11 describes successive government and private employment, the Panel is of the opinion that the rationale of the Rule applies as well to concurrent government and private employment. See R.I. Supreme Court Ethics Advisory Panel Op. 96-13 (1996). Attorneys in the inquiring attorney's law firm are representing the inquiring attorney's son in a claim against City for damages arising out of termination from City employment. The matter has been arbitrated, and will be the subject of a lawsuit in Superior Court. The matter is not one which has been or will be litigated in City's municipal court. The Panel does not believe that there is a conflict of interest under Rule 1.11. There are no facts to indicate that the inquiring attorney, in the discharge of his duties as a municipal court judge, has participated personally and substantially, or will participate personally and substantially, in his son's matter. Further, the inquiring attorney has not acquired disqualifying confidential information about City in his role as municipal court judge.

Finally, the Panel believes that there is no concurrent conflict of interest under Rule 1.7 presented by this inquiry. There is no direct adversity under Rule 1.7(a) (1), as City is not a client of the inquiring attorney or the law firm. In addition, there is no material limitation under Rule 1.7(a)(2), as the Panel does not believe that the inquiring attorney's responsibilities to City as a municipal court judge will materially limit the law firm's representation of his/her son in the lawsuit.

The Panel concludes that it is not a conflict of interest under Rules 1.11 or 1.7 for the law firm of the inquiring attorney, who also is a part-time municipal court judge in City, to represent the inquiring attorney's son in a Superior Court lawsuit against City. The Panel's guidance is restricted to interpretations of the Rules of Professional Conduct and does not extend to issues under the Code of Judicial Conduct, the State Ethics Code, or any other rules, regulations or laws that may have bearing on the issues raised by this inquiry.